

REMARKS

Claims 2, 4-6 and 8 have been previously cancelled. Claims 13-26 have been added. Accordingly, claims 1, 3, 7, 9 and 13-26 are pending and at issue.

Claim 3 has been amended to depend from claim 1. Accordingly, it is believed the rejection under §112 has been overcome and should be withdrawn.

The rejection of claims 1, 3, 7 and 9-12 as being indefinite is respectfully traversed. The rejection asserts that “it is unclear as to whether or not the container is ventilated” in view of claim 1’s recitation of “a flow path for at least temporary ventilation of the container” in combination with claim 1’s recitation that “the seal . . . so as to close the flow path to prevent ventilation of the container through the flow path”. There is nothing unclear about the recitation in the claims and one skilled in the art can easily determine whether or not the claim recitations are met by any particular structure. In this regard, the claim structure is recited in a clear and concise fashion and leaves no doubt that the inner hole rim of the seal rests against the outside of the pump housing so as to close the flow path to prevent ventilation of the container through the flow path. That the flow path is structurally defined as allowing “at least temporary ventilation of the container” does not change the clear and concise meaning of the claims, and the rejection’s assertion as to whether or not it is unclear whether or not the container is ventilated is irrelevant in this regard. The structure recited in the claim is clear and the rejection is improper and should be withdrawn. To the extent that the Examiner maintains the rejection, it is expressly requested that the Examiner explain the relevancy of “whether or not the container is ventilated” given the recitation that “the

seal having an inner hole rim resting against the outside of the pump housing so as to **close the flow path to prevent ventilation of the container through the flow path.**

The rejection of claims 1, 3 and 9-11 as unpatentable over Garcia (EP 1,050,481) and Nomoto et al (US 6,266,043) in view of Stone (US 4,322,020) is respectfully traversed.

As an initial matter, it is noted that Applicants' arguments submitted with the Request for Continued Examination and the associated fee for continued examination were not addressed in the current Office Action except for an assertion in the Office Action that the arguments had been "fully considered but are moot in view of the new rejections made in this action". However, contrary to this assertion, some of the arguments made in Applicants' prior response apply equally to the new rejections and should have been addressed in the current Office Action, especially in consideration of the fees paid to request continued examination. It is respectfully requested that the next Office Action be non-final so that Applicants have the benefit of the Examiner's view of the arguments and the benefit of the fee paid in connection with the Request for Continued Examination. In this regard, Applicants' prior response stated, at page 7:

Garcia does not disclose nor suggest a flow path formed between a retainer and a pump. The design of the known device does not provide a standard metering pump wherein said pump allows normally at least temporary ventilation of a container equipped with such a pump. Moreover, Garcia does not deal with a seal having an inner hole rim resting against the outside of the pump housing in an airtight manner, so that a flow path for ventilation of the container is closed by the seal. Garcia discloses on page 4, lines 38 to 40 in paragraph [0021] when a seal 132 is used said seal is retained to body 141 by friction or in a form fit manner, so that an easier assembly of these parts is possible. A seal having an inner hole rim that is pressed against body 141 in an airtight manner, so that the flow path for ventilation of the container is closed by the seal is not disclosed in Garcia.

Nomoto is silent regarding a standard metering pump wherein the standard metering pump allows normally at least temporary ventilation of an associated container by a flow path defined between a retainer and the pump. Consequently, Nomoto can not anticipate a dispenser pack with a seal having an inner hole rim resting against the outside of the pump housing in a flow path defined between a retainer and the pump so as to close the flow path to prevent ventilation of the container during use.

The above arguments are completely relevant to both the prior rejection and the current rejection because they address structure that is not shown in Garcia or Nomoto. Specifically, claim 1 recites “a flow path . . . **formed between the retainer and the pump**”, which as noted in the argument above is not shown in Garcia, despite the prior rejection's and the current rejection's assertion that Garcia does show such structure. In this regard, it cannot be ignored that the Retainer identified in the “Marked-up portion of Fig. 3” of the present Office Action is part of the pump, and that a flow path cannot be formed **between** the retainer asserted in the Office Action and the pump because they are **the same** component. Nomoto adds nothing in this regard because, like Garcia, Nomoto discloses a flange (424) that is part of the pump, just as the Retainer asserted in the present rejection is part of the pump of Garcia. Stone adds nothing in this regard because Stone fails to disclose any kind of retainer having a flange that can be pressed against an annular seal on an outer face of the container neck, let alone a flow path formed between such a retainer and the pump. Accordingly, taken alone or together, Garcia and Nomoto and Stone fail to disclose or suggest a flow path as recited in the rejected claims and the rejection should be withdrawn.

Furthermore, the rejected claims characterize the seal as comprising “an annular lip which forms the hole rim and is spaced radially inward in the form of a truncated

cone **across an annular space in the flow path** against the cylindrical outside of the pump housing so as to seal the flow path.” Because Garcia and Nomoto fail to disclose or suggest a flow path “formed between the retainer and the pump”, as previously discussed, it follows that they cannot disclose “an annular space” in such a flow path. In this regard, it is noted that the Retainer asserted in the rejection (which is part of the pump) doesn’t in any way disclose “an annular space” formed between itself and the pump, nor does the flange (424) in Nomoto disclose such an “annular space”, let alone an annular lip that is “pressed radially inward in the form of a truncated cone across” such an annular space in such a flow path. Stone adds nothing in this regard because Stone fails to disclose any kind of retainer having a flange that can be pressed against an annular seal on an outer face of the container neck, let alone a flow path formed between such a retainer and the pump. Accordingly, for this additional reason, the rejection is improper and should be withdrawn.

The rejection of claims 7 and 12 as unpatentable over Garcia and Nomoto in view of Stone as applied to claims 1, 3 and 9-11 and further in view of Meshberg (US 4,008,830) is respectfully traversed. Claims 7 and 12 depend from claim 1 and the rejection is improper and should be withdrawn for the reasons stated above in connection with claim 1. Furthermore, the rejection is based upon an improper modification of the combination of Garcia and Nomoto and Stone with Meshberg. Specifically, the combination of Garcia and Nomoto and Stone is directed towards a container having a neck therein defining an upper aperture rim, whereas Meshberg is specifically directed at a very different type of container having an open topped compartment with absolutely no neck structure. Accordingly, one skilled in the art would

not apply the teachings of Meshberg to the combination. For this additional reason, the rejection is improper and should be withdrawn.

Claims 13-25 have been added. With respect to these added claims, the prior art does not disclose a ventilation channel formed between the retainer and the pump, wherein the channel is connectable to the environment in an operable or assembled state of the dispenser pack.

To the extent Nomoto teaches any kind of a ventilation channel, it teaches that such a channel only used as a ventilation channel during assembly of the pump into the container. After assembly and during normal operation of the pump the channel of Nomoto is always closed to the environment by seal (435). Nomoto gives no hint regarding a ventilation channel openable to the environment in an assembled state of the dispenser pack. Consequently, Nomoto does not teach a ventilation channel, wherein during operation of the pump a ventilation channel is temporary connectable to the environment.

Support for the added claims can be found at page 5, line 30 - page 6, line 1 of the English translation of the application which states:

A sealing lip 102, 103 each, of annular shape, is formed to the top end of the pump piston 45, which sealing lip rests tightly with elastic pre-tension against the internal wall of the pump cylinder 43. In the home position of the pump piston 45 its top end rests against the bottom end 73 of the cylindrical internal wall 72 of the retainer 38 so as to provide a seal.

and at page 8, line 1 - line 9 of the English translation of the application which states:

During movement of the pump piston 45 into the bottom end position of the pump stroke the air flows thorough the annular gap 23 along the internal wall 72 of the retainer 38 and the pump housing 48 thorough the radial air channel 70 into the circumferential groove 68. Here the air is

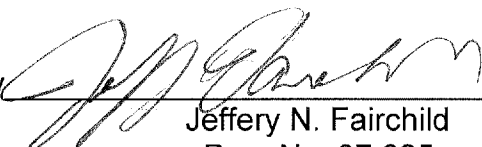
distributed in both directions around the circumference of the retainer 38 across approximately 180° where it then flows through the groove 62 into the annular space 57 of the pump housing 48. After this, the air is prevented from entering the bag 28 by the annular seal 41 which in the subsequent suction stroke of the pump piston 45, due the resulting pressure difference between the interior of the bag 28 and the exterior air, is present in the pump housing at increased pressure.

Consequently, a ventilation channel formed between the retainer and the pump is disclosed, wherein during operation of the pump a first end of the ventilation channel is temporary connectable to the environment.

In view of the foregoing, reconsideration of the rejections and allowance of the case is respectfully requested.

Respectfully submitted,

WOOD, PHILLIPS, KATZ,
CLARK & MORTIMER

By 
Jeffery N. Fairchild
Reg. No. 37,825

August 23, 2011

500 West Madison Street
Suite 3800
Chicago, IL 60661-2562
312/876-2106